



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,423	03/14/2001	Gene E. Nacey	2556/008	3458
23861	7590	07/18/2008		
METZ LEWIS, LLC 11 STANWIX STREET 18TH FLOOR PITTSBURGH, PA 15222			EXAMINER PASS, NATALIE	
			ART UNIT	PAPER NUMBER
			3626	
			MAIL DATE	DELIVERY MODE
			07/18/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/808,423

Applicant(s)

NACEY, GENE E.

Examiner

Natalie A. Pass

Art Unit

3626

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Notice to Applicant

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8 May 2008 has been entered.
2. This communication is in response to the Request for Continued Examination and response filed on 8 May 2008. Claims 1-38 have been previously cancelled. Claims 39-76 remain pending.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 39-40, 44-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolawa et al., U.S. Patent Number 6, 370, 513 in view of Cosentino et al., U.S. Patent Number 6, 290, 646 for substantially the same reasons given in the previous Office Action (paper number 20080128), and further in view of Petot, et al. article: "An artificial intelligence system for

computer-assisted menu planning,” Sept. 1998, hereinafter known as Petot. Further reasons appear hereinbelow.

(A) As per claim 39, Kolawa teaches a method for facilitating food service management, said method comprising the steps of:

providing a computer-based system (Kolawa; Figure 1 column 4, line 63 to column 5, line 13);

establishing a standard set of therapeutic diet types contained in a master diet type database in said system (Kolawa; column 7, lines 15-17, column 9, lines 15-21);

storing a plurality of food recipes in said system within a recipe database (Kolawa;) (Kolawa; Figure 15, column 7, lines 15-17, column 16, lines 32-34);

obtaining nutritional data on each food item used in said plurality of recipes and storing said data in said system within a food item database (Kolawa; Figures 26A TO 26D, column 16, line 63 to column 17, line 33);

analyzing (reads on “evaluating”) “the chemical components in the specified foods” (reads on “a nutritional content of each food item”) (Kolawa; Figures 26A to 26D, column 16, lines 29 to column 17, line 33, column 3, lines 25-31); Examiner interprets Kolawa’s teachings of analysis of food products into “attributes” that include “protein,” “total lipid (fat),” “carbohydrate (by difference),” “energy” (i.e. calories), “water” (i.e. moisture), “sugars, total,” “fiber, total dietary,” “calcium,” iron,” “magnesium,” “phosphorus,” “potassium,” “sodium,” and “zinc” (Kolawa; Figure 26A) to be a form of “evaluating a nutritional content of each food item;”

verifying a “chemical component” (reads on “a nutritional value”) of each of said plurality of recipes in said recipe database (Kolawa; Figure 15, Figure 17, column 3, lines 25-31, column 16, lines 52-65, column 17, lines 10-33);

assigning various food attributes to said recipes based upon said verified nutritional values (Kolawa; Figures 26A TO 26D, column 16, lines 20-32);

shaping menu sets of said recipes for each of said established therapeutic diet types (Kolawa; column 9, lines 15-21) in a menu database in said system based upon said assigned food attributes (Kolawa; Figure 7, column 11, lines 3-7, 40-49);

making “chemical components” information (reads on “nutritional information associated with said menu sets”) available (Kolawa; Figure 15, Figure 17, Figure 26A, Figure 26B, column 3, lines 25-31, column 16, lines 52-65, column 17, lines 10-33); and

tracking an inventory of food items (Kolawa; Figure 11, column 13, lines 29-39).

Although Kolawa teaches making nutritional information associated with said menu sets available, Kolawa fails to explicitly disclose a method comprising

making nutritional information associated with said menu sets available to said food service professionals;

providing a remote link to food service professionals associated with said healthcare facility to access said system;

collecting information from said food service professionals; and

suggesting menu sets to said food service professionals.

However, the above features are well-known in the art, as evidenced by Cosentino.

In particular, Cosentino teaches a method including

making nutritional information available to said “nutritionists” (reads on “food service professionals”) (Cosentino; column 2, lines 25-62); Examiner interprets Cosentino’s teachings of a method “of monitoring and transmitting physiological and wellness parameters of overweight/obese patients to a remote site where a weight management professional or nutritionist evaluates such physiological and wellness parameters ... [and] ... can supervise and provide nutritional guidance to remotely located individuals” (Cosentino; column 2, lines 25-62) and “[m]oreover, the apparatus allows the weight management professional to intervene and adapt the individuals diet and exercise routine based on the weight and wellness information received” and “communication to a medical professional caregiver, weight management professional or nutritionist” (Cosentino; column 2, lines 59-62) to teach a form of making nutritional information available to said “food service professionals;”

providing a remote link to “nutritionists” (reads on “food service professionals”) associated with said healthcare facility to access said system (Cosentino; column 2, lines 56-62); collecting information from said food service professionals (Cosentino; column 2, lines 25-34, 56-62); and

“adapt[ing] the individual’s diet” (reads on “suggesting menu sets”) to said food service professionals (Cosentino; column 2, lines 25-34, 41-46, 56-62).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Kolawa to include these limitations, as taught by Cosentino, with the motivations of enabling the “monitoring and transmitting physiological and wellness parameters of overweight/obese patients to a remote site where a weight management professional or nutritionist evaluates such physiological and wellness parameters” and “can

supervise and provide nutritional guidance to remotely located individuals” (Cosentino; column 2, lines 48-54).

Although Kolawa teaches facilitating food service management, Kolawa fails to explicitly disclose facilitating food service management in a health care facility.

However, the above features are well-known in the art, as evidenced by Petot.

In particular, Petot teaches a method including

facilitating food service management in a health care facility (Petot; page 1014, column 1, paragraph 2 to column 2, paragraph 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined teachings of Kolawa and Cosentino to include these limitations, as taught by Petot, with the motivations of “planning daily menus in accordance with the nutrition needs and personal preferences of individual clients ... [...] ...could also apply to planning special-purpose menus for use in many different settings. For example, preplanned menus for metabolic diets in a clinical research center can become a case base, which can then be accessed for menus. Menus revised to meet specific research needs can be added to the case base for future protocols. A menu planner for [therapeutic] diabetic diets could be built by tuning the adaptation strategies to meet individual needs ... [...] ... could be adapted for use by institutions such as nursing homes, hospitals, schools and colleges, wellness and fitness centers, and nutrition education programs” (Petot; page 1014, column 1, paragraph 2 to column 2, paragraph 1).

(B) As per claims 40-41, 44-49, Kolawa, Cosentino and Petot teach a method as analyzed and discussed in claim 39 above further comprising the steps of

categorizing said plurality of recipes according to geographic regions having noticeable differences in food tastes (Kolawa; Figure 16, Figure 27, column 18, lines 5-7);

planning daily menus in accordance with “guidelines” and “standards” (reads on “eliminating variances in said therapeutic diet types among differing health care facilities”) (Petot; Abstract, page 1011, column 1, paragraphs 3-4);

forming a large library of menu sets in said menu database (Kolawa; column 18, lines 24-29);

allowing said “nutritionists” (reads on “food service professionals”) to choose a set of menus from said library (Cosentino; column 2, lines 25-34, 41-46, 56-62);

suggesting menu sets to said food service professionals based upon said inventory of food items at said healthcare facility (Cosentino; column 2, lines 25-34, 41-46, 56-62), (Kolawa; column 13, lines 29-39);

suggesting menu sets to said food service professionals based upon an individual patient's preference (Cosentino; column 2, lines 25-62);

wherein said patient's preference is based upon said patient's particular food tastes (Kolawa; column 4, lines 63-66); and

wherein said patient's preference is based upon said patient's religious beliefs (Kolawa; column 7, lines 15-17); Examiner interprets “ethnicity” to be a form of “religious beliefs.”

The motivations for combining the respective teachings of, Kolawa, Cosentino and Petot are as given in the rejection of claim 39 above, and incorporated herein.

(C) As per claims 50-58, Kolawa, Cosentino and Petot teach a method as analyzed and discussed in claim 39 above further comprising the steps of

storing said information collected from said food service professionals in said system in a user database. (Kolawa; Figure 2, column 4, line 63 to column 5, line 9, column 5, lines 45-52), (Cosentino; column 12, lines 33-44);

wherein said stored information in said user database includes identifying information (Kolawa; Figure 2, column 4, line 63 to column 5, line 9, column 5, lines 45-52), (Cosentino; column 12, lines 33-44);

wherein said stored information in said user database includes “keeping track of the needs and preferences of the user” (reads on “historical information on prior use of said system by said food service professionals”) (Kolawa; Abstract, column 10, lines 41-43);

further comprising the step of limiting access to said system to “medical professional caregiver” (reads on “food service professionals”) associated with a healthcare facility (Cosentino; column 3, lines 41-45, column 4, lines 28-30); Examiner interprets Cosentino’s teachings of “a remote central office location” at which a “medical professional” caregiver “monitors the patient’s condition and provides medical treatment as may be necessary” to read on “a healthcare facility;”

further comprising the step of authorizing at least one “medical professional caregiver” (reads on “food service professionals”) associated with a healthcare facility to receive information (Kolawa; Figure 18, column 18, lines 1-5);

further comprising the step of allowing said food service professionals to place food item orders via said system (Kolawa; Figure 11, column 5, lines 25-27, column 13, lines 15-17, column 14, line 9);

further comprising the step of automatically updating said inventory to reflect said orders (Kolawa; Figure 11, column 13, lines 50-55);

wherein said food service professionals can place food item orders with a plurality of food item distributors (Kolawa; Figure 11, column 13, lines 50-55, column 19, lines 41-43); and

further comprising the step of providing a standard format for order transactions such that said food service professionals can make objective decisions about placing said orders (Kolawa; column 13, lines 15-25).

The motivations for combining the respective teachings of Kolawa, Cosentino and Petot are as given in the rejection of claim 39 above, and incorporated herein.

(D) As per claims 59-61, Kolawa, Cosentino and Petot teach a method as analyzed and discussed in claim 39 above further comprising the steps of

providing said food service professionals the ability to “communicate” (reads on “interact”) with a system proprietor (Cosentino; column 2, lines 56-62, column 3, lines 4-7);

providing said food service professionals the ability to “communicate” (reads on “interact”) with other food service professionals associated with other healthcare facilities (Cosentino; column 2, lines 56-62, column 3, lines 4-7); and

providing a search engine such that said food service professionals can search said databases (Kolawa; column 17, lines 9-23, 57-62).

The motivations for combining the respective teachings of Kolawa, Cosentino and Petot are as given in the rejection of claim 39 above, and incorporated herein.

(E) Claim 62 differs from method claim 39 in that it is a system rather than a method for facilitating food service management in a health care facility.

System claims 62-75 repeat the subject matter of claims 39, 40, 44-47, 50, 53-57, 60-61, respectively, as a set of elements rather than a series of steps. As the underlying processes of claims 39, 40, 44-47, 50, 53-57, 60-61 have been shown to be fully disclosed by the collective teachings of Kolawa, Cosentino and Petot in the above rejection of claims 39, 40, 44-47, 50, 53-57, 60-61, it is readily apparent that the system disclosed collectively by Kolawa, Cosentino and Petot includes the apparatus to perform these functions. As such, these limitations are rejected for the same reasons given above for method claims 39, 40, 44-47, 50, 53-57, 60-61, and incorporated herein.

The motivations for combining the respective teachings of Kolawa, Cosentino and Petot are as given in the rejection of claim 39 above, and incorporated herein.

(F) Claim 76 differs from method claim 39 by reciting a “program storage device readable by machine for tangibly embodying ...” in the preamble. As per this limitation, Kolawa clearly discloses his invention to be implemented on a “program storage device readable by machine for tangibly embodying ...” (Kolawa; column 4, line 62 to column 5, line 9). The remainder of claim 76 repeats the limitations of claim 39, and is therefore rejected for the same reasons given above for claim 39.

The motivations for combining the respective teachings of Kolawa, Cosentino and Petot are as given in the rejection of claim 39 above, and incorporated herein.

5. Claims 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolawa et al., U.S. Patent Number 6, 370, 513 in view of Cosentino et al., U.S. Patent Number 6, 290, 646 and Petot, et al. article: "An artificial intelligence system for computer-assisted menu planning," Sept. 1998, hereinafter known as Petot, as applied to claim 39 above, and further in view of Brown, U.S. Patent Number 6, 168, 563, for substantially the same reasons given in the previous Office Action (paper number 20080128). Further reasons appear hereinbelow..

(A) As per claims 42-43, Kolawa, Cosentino and Petot teach a system as analyzed and discussed in claim 39 above.

Although Kolawa, Cosentino and Petot teach modifying menus for diabetic diets (Kolawa; column 9, lines 15-21), Kolawa, Cosentino and Petot fail to explicitly disclose a method

further comprising the step of evaluating diabetic exchange rates of each food item; wherein said verification of nutritional value of each of said plurality of recipes is based upon said evaluation of nutritional content and said evaluation of diabetic exchange rates of each food item.

However, the above features are well-known in the art, as evidenced by Brown.

In particular, Brown teaches a method

. further comprising the step of evaluating diabetic exchange rates of each food item (Brown; column 21, lines 32-53, column 22, lines 44-55);

wherein said verification of nutritional value of each of said plurality of recipes is based upon said evaluation of nutritional content and said evaluation of diabetic exchange rates of each food item (Brown; column 21, lines 32-53, column 22, lines 44-55).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined teachings of Kolawa, Cosentino and Petot to include these limitations, as taught by Brown, with the motivations of “providing a simple and inexpensive system for remotely monitoring patients and for communicating information to the patients” and to “provide reliable information that allows a diabetic and his or her healthcare professional to establish, monitor and adjust a treatment plan (diet, exercise, and medication)” (Brown; column 5, line 66 to column 6, line 2, column 1, lines 54-56).

The motivations for combining the respective teachings of Kolawa, Cosentino and Petot are as given in the rejection of claim 39 above, and incorporated herein.

Response to Arguments

6. Applicant's arguments filed 8 May 2008 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 8 May 2008.

(A) At pages 12-13 of the 8 May 2008 response Applicant argues that the limitations of claims 39-76 are not taught or suggested by the applied references. In response, all of the limitations which Applicant disputes are missing in the applied references have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the combined teachings of Kolawa, Cosentino, Petot and Brown, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the 35 USC § 103 rejections given in the preceding sections of the present Office Action. In particular, Examiner notes that “the use of nutritional value for setting suggested meal plans” (although not

a claimed limitation *per se*) is taught by the applied references. In particular, please note (Petot; page 1014, column 1, paragraph 2 to column 2, paragraph 1). Examiner interprets Petot's teachings of "a tool for planning daily menus in accordance with the nutrition needs and personal preferences of individual clients ... [...] ..., the framework and methodology could also apply to planning special-purpose menus for use in many different settings. For example, preplanned menus for metabolic diets in a clinical research center can become a case base, which can then be accessed for menus. Menus revised to meet specific research needs can be added to the case base for future protocols. A menu planner for diabetic diets could be built by tuning the adaptation strategies to meet individual needs. The system could be adapted for use by institutions such as nursing homes, hospitals, schools and colleges ... [...] ..." (emphasis added) to teach a form of "the use of nutritional value for setting suggested meal plans" as argued by Applicant in lines 7-20 on page 12 of the 8 May 2008 response.

As per Applicant's arguments in the paragraph bridging pages 12-13 of the response filed on 8 May 2008, that the Cosentino reference fails to teach making nutritional information available to said food service professionals, Examiner respectfully disagrees; Examiner interprets Cosentino's teachings of a method "of monitoring and transmitting physiological and wellness parameters of overweight/obese patients to a remote site where a weight management professional or nutritionist evaluates such physiological and wellness parameters ... [and] ... can supervise and provide nutritional guidance to remotely located individuals" (emphasis added) (Cosentino; column 2, lines 25-62) and Cosentino's teachings of "[m]oreover, the apparatus allows the ... [...] ... professional to intervene and adapt the individuals diet ... [...] ... based on the ... [...] ... information received" (emphasis added) (Cosentino; column 2, lines 25-62) and

Cosentino's teachings of "communication to a medical professional caregiver, weight management professional or nutritionist" (Cosentino; column 2, lines 59-62) to teach a form of making nutritional information available to food service professionals or "nutritionists," as it is "nutritional information" that would allow for a food service professional to provide "nutritional guidance" and adapt an individual's diet accordingly.

As per Applicant's arguments in the paragraph bridging pages 12-13 of the response filed on 8 May 2008, that (1) Examiner has merely cited the "background" of the Cosentino invention, and that (2) the Cosentino reference fails to teach "providing nutritional information available to food service professionals,; Examiner respectfully disagrees on both points, and notes that point (2) has been discussed earlier in this Office Action. As for point (1), Examiner notes that the "background" of an invention is part of the disclosure of the invention, and further notes that in the Cosentino invention lines 25-54 describe why there is a need for Cosentino's invention and include a description of Cosentino's apparatus in lines 36-46. Moreover, Examiner notes that the Summary of Cosentino's invention begins in line 56 with the following paragraph:

"The invention is directed to an apparatus, system and method that satisfies this need. The apparatus having features of the invention is capable of ... [...] ... establishing two way communication to a medical professional caregiver, weight management professional or nutritionist regarding the wellness parameters of such an ambulatory patient" (emphasis added) (Cosentino; column 2, lines 56-62).

Accordingly, Examiner maintains the rejection.

With regard to Applicant's arguments at the first full paragraph on page 13 in the 8 May 2008 response that "[t]here is no physiological component nor is there any teaching or suggestion that the system might be utilized by participatory third parties," and that the applied references fail to teach "providing specific feedback to the user by the system itself based upon the inputs of the user," Examiner respectfully notes that these are not claimed limitations.

Conclusion

7. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to: **(571) 273-8300.**

For informal or draft communications, please label
"PROPOSED" or "DRAFT" on the front page of the
communication and do NOT sign the communication.

After Final communications should be labeled "Box AF."

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (571) 272-6774. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher L. Gilligan can be reached on (571) 272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. A. P./
Examiner, Art Unit 3626
July 12, 2008

/C Luke Gilligan/
Supervisory Patent Examiner, Art Unit 3626